

1 **UNITED STATES DISTRICT COURT**
2 **EASTERN DISTRICT OF NEW YORK**

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3 **DEMETRIA FULTON GREEN,**

CASE NO.:

4 **Plaintiff,**

5 **-against-**

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

6 **PERFORMANT RECOVERY, INC.,**

7 **Defendant.**

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8 **COMPLAINT**

9 DEMETRIA FULTON GREEN (“Plaintiff”), by and through her attorneys, Kimmel &
10 Silverman, P.C., alleges the following against PERFORMANT RECOVERY, INC.
11 (“Defendant”):

12 **INTRODUCTION**

13 1. Plaintiff’s Complaint is based on Defendant’s repeated violations of the Fair
14 Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”).

15 **JURISDICTION AND VENUE**

16 2. This Court’s jurisdiction arises under 15 U.S.C. § 1692k(d), which states that
17 such actions may be brought and heard before “any appropriate United States district court
18 without regard to the amount in controversy,” and 28 U.S.C. § 1331, which grants this court
19 original jurisdiction of all civil actions arising under the laws of the United States. See Mims v.
20 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

21 3. Defendant regularly conducts business in the State of New York therefore
22 personal jurisdiction is established.

23 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2).
24
25

PARTIES

5. Plaintiffs are natural persons residing in Saint Albans, New York 11412.

6. Plaintiffs are “consumers” as that term is defined by 15 U.S.C. § 1692a(3).

7. Defendant is a professional corporation specializing in debt collection with its principal place of business located at 333 N. Canyons Parkway Suite 100, Livermore, California 94551.

8. At all times material hereto, Defendant acted as a “debt collector[s]” within the meaning of 15 U.S.C. § 1692(a)(6), and attempted to collect a “debt” as defined by 15 U.S.C. § 1692(a)(5).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. At all times material hereto, Defendant contacted Plaintiff in an attempt to collect an alleged consumer debt.

11. Beginning in or around December 2014 and continuing through April 2015 Defendant placed repeated harassing telephone calls to Plaintiff’s cellular telephone in its attempts to collect an alleged debt.

12. Defendant’s collectors called Plaintiff from telephone numbers including, but not limited to, (541) 955-7800. The undersigned has confirmed that this number belongs to Defendant.

13. During these calls Defendant threatened to take legal action against Plaintiff.

14. However, upon information and belief Defendant never took legal action against Plaintiff.

1 15. Frustrated, Plaintiff told Defendant to stop calling her, but the calls persisted.

2 16. Once Defendant was aware the calls were unwanted Defendant's continued calls
3 to Plaintiff served no other purpose than to harass Plaintiff.

4 17. Defendant's actions as described herein were taken with the intent to harass,
5 abuse, and coerce payment from Plaintiff.

6
7 **COUNT I**
8 **DEFENDANT VIOLATED § 1692d OF THE FDCPA**

9 18. A debt collector violates § 1692d by engaging in any conduct the natural
10 consequence of which is to harass, oppress, or abuse any person in connection with the
11 collection of a debt.

12 19. Defendant violated § 1692d when it placed repeated and continuous harassing
13 telephone calls to Plaintiff and when it continued calling Plaintiff's cellular phone after Plaintiff
14 told Defendant to stop calling.

15
16 **COUNT II**
17 **DEFENDANT VIOLATED § 1692d(5) OF THE FDCPA**

18 20. A debt collector violates § 1692d(5) by causing a telephone to ring or engaging
19 any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or
20 harass any person at the called number.

21 21. Defendant violated § 1692d(5) when it placed repeated and continuous harassing
22 telephone calls to Plaintiff.

COUNT III
DEFENDANT VIOLATED § 1692e OF THE FDCPA

22. A debt collector violates § 1692e when it uses false, deceptive or misleading representations or means in connection with the collection of any debt.

23. Defendant violated § 1692e when it made false, deceptive and misleading representations to Plaintiff that if Plaintiff did not pay the debt it would take legal action against her when Defendant had no intention of taking such action..

COUNT IV
DEFENDANT VIOLATED § 1692e(5) OF THE FDCPA

24. A debt collector violates § 1692(e)5 when it threatens to take legal action against a person when it does not intend to take legal action against that person.

25. Defendant violated § 1692(e)(5) when it threatened Plaintiffs with legal action that it did not intend to and did not take.

COUNT V
DEFENDANT VIOLATED § 1692f OF THE FDCPA

26. A debt collector violates § 1692f by using unfair or unconscionable means to collect or attempt to collect any debt.

27. Defendant violated § 1692f when it continued to call Plaintiff without his consent, and when it threatened legal action that it had no intention of taking, and generally, when it used unfair and unconscionable means to collect the alleged debt.

WHEREFORE, Plaintiffs, DEMETRIA FULTON GREEN respectfully prays for judgment as follows:

- a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs, pursuant to 15 U.S.C. § 1693k(a)(3);
- f. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff DEMETRIA FULTON GREEN, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Dated: May 22, 2015

KIMMEL & SILVERMAN, P.C.

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